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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/040,871	01/07/2002	Keith E. Kenyon	DKK-9128	6953
7590 07/02/2004				
Keith E. Kenyon, M.D. 14435 Hamlin Street, Ste. C Van Nuys, CA 91401-6205				
			EXAMINER NASSER, ROBERT L	
			ART UNIT 3736	PAPER NUMBER

DATE MAILED: 07/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/040,871

Applicant(s)

KENYON, KEITH E.

Examiner

Robert L. Nasser

Art Unit

3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10/23/2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 11-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

The examiner invites applicant to phone him to discuss ways in which the case may be made to define over the prior art and to correct the formality issues.

Applicant's election of group I, claims 1-10 in the reply filed on 10/24/2003 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 11-19 have accordingly been withdrawn from consideration. The examiner points out to applicant that these claims are still in the case, just are not being considered currently.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 5, 7, 8, and 10 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 5 is rejected in that the term "chemical agent" lacks antecedent basis, as it was not previously used. Regarding claims 7 and 8, the phrase "including but are not limited to" renders the claim indefinite because it is unclear what the extent of the list is. See MPEP § 2173.05(d). Claim 10 is rejected because applicant has not previously discussed in the claims determining heart function.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-3, 7, 8, and 10 are rejected under 35 U.S.C. 102(e) as being anticipated by St. Cyr et al. St Cyr teaches on column 12, 60- column 13, line 36, a method where a patient takes a baseline treadmill stress test including a baseline level (resting) and then a series of measurements over time, and then, after the test is over, orally takes 40 gm daily of d-ribose (which is longer than one hour) and then repeats the exercise stress test, including a baseline (resting) reading and then readings under stress. With regard to claim 7, a stress scanning is used. With regard to claim 8, the examiner takes official notes that the electrodes recited are standard in a treadmill stress test. With regard to claim 10, 120 gm of d-ribose is administered.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over St. Cyr et al in view of Rafter 6503203. Rafter teaches the equivalence of dobutamine chemical stress test and an exercise stress test (see column 2, lines 6-12). Therefore, it would have been obvious to modify St. Cyr to use such a chemical stress inducer, as it is merely the substitution of one known equivalent stress causing means for another.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over St. Cyr et al in view of Sawada et al 6339716. Sawada further teaches the equivalence of intravenous or oral administration of d-ribose. (see column 3, lines 40-42). Hence, it would have been obvious to modify St. Cyr to intravenously administer the drug, as it is merely the substitution of one known equivalent delivery technique for another.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over St. Cyr et al in view of St. Cyr et al. As noted in column 13, d-ribose improves heart performance. It would therefore have been obvious to use it as a therapeutic agent after the test, to continue to keep levels of improved heart performance.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert L. Nasser whose telephone number is (703) 308-3251. The examiner can normally be reached on Mon-Fri, variable hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (703) 308-3130. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RLN
June 25, 2004

Robert L. Nasser
Primary Examiner
Art Unit 3736



ROBERT L. NASSER
PRIMARY EXAMINER